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Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: CC Docket No. 96-128; NSD File No. L-99-34**

Dear Ms. Salas:

The following information is submitted on behalf of the American Public Communications Council, Inc. ("APCC") in response to a staff request for estimates of (1) the number of carriers owing per-call "dial-around" compensation to payphone service providers ("PSPs"), (2) the number of prepaid card service providers; (3) the number of carriers that pay some per-call compensation to PSPs; and (4) the number of compensable calls for which PSPs are not being compensated. The information submitted is based on the compensation collection experience of a number of PSPs and compensation collection agents, including APCC Services, Inc. ("APCCS"), an arm of APCC that operates a compensation collection clearinghouse for several hundred PSP clients.

### How Many Carriers Owe Dial-Around Compensation?

Currently, facilities-based interexchange carriers ("IXCs") generally disclaim any liability to pay dial-around compensation for calls that they handle for customers that the IXCs consider to be "switch-based resellers." As a result, a substantial number of payphone calls routed to facilities-based IXCs are uncompensated by those IXCs, and the PSP must attempt to identify, bill and collect compensation from the IXC's reseller customer. Further, the facilities-based IXCs generally provide minimal, if any, assistance in identifying their reseller customers who are liable to pay compensation and the number of calls routed to each reseller for which the IXC is disclaiming payment. Over the past few months, two IXCs have provided the names of hundreds of companies that they allege to be "switch-based resellers" for which the IXCs have not paid "dial-around compensation" ("DAC") to the PSPs. However, even those two IXCs do not provide call volumes for calls handled by their reseller customers. Without this information, PSPs cannot determine which of an

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IXC's resellers owe the greatest amount of DAC so that the PSP's legal and other resources can be used most effectively to collect unpaid compensation.

Accordingly, in order to attempt to collect compensation on calls for which facilities-based IXCs disclaim payment, PSPs must find other means to identify switch-based resellers. There is no master list of all carriers that handle calls from payphones. Therefore, APCCS has been forced to piece together information from a variety of sources in order to identify and locate carriers that may be liable to pay payphone compensation. Sources consulted by APCCS include listings of carriers paying regulatory fees and contributions to FCC-administered funds, industry directories, trade association membership listings, and state public service commission registration records. However, none of these sources provides information that indicates (1) whether a reseller owns or controls a switch, and (2) the number of calls, if any, that each carrier has received from payphones operated by APCCS' clients.

Further, APCCS has found that a number of carriers that carry substantial numbers of payphone calls were not even included in the sources mentioned above. For example, many of the resellers recently identified by two underlying IXCs (see above) were not found in the other sources consulted by APCCS.

Using these various methods, in the Fourth Quarter 1999 compensation period, APCCS identified approximately 1,175 carriers as potentially liable to pay compensation. However, APCC has no reason to believe that it has identified all the carriers that may be liable to pay compensation.

### **How Many Prepaid Card Service Providers Are There?**

One category of resellers that receive calls from payphones is prepaid card service providers. This is an important group because prepaid card providers rely on payphone "dial-around" calls as a primary means of access to their services. A substantial percentage of the dial-around calls made from payphones are placed using prepaid cards.

However, as with carriers generally, it is difficult to identify and locate prepaid card providers that receive calls from payphones. In order to help identify prepaid card providers, APCC has encouraged its members to gather "dead" prepaid phone cards left behind at payphone locations and forward them to APCC. To date, over 6,000 phone cards, issued by 178 different prepaid card companies, have been collected by APCC.

APCC has also consulted industry trade association membership listings and state public service commission records to identify prepaid card service providers. One

commission, the Florida Public Service Commission, lists 203 prepaid card providers on its web site (<http://www2.scri.net/psc/mcd/TPDC.html>).

Again, as is the case with resellers generally, these sources do not indicate (1) whether a prepaid card service provider owns or controls a switch, and (2) the number of calls that each prepaid card service provider has received from payphones operated by APCCS' clients.

Based on these results, it appears that there are at least 200, and probably a much larger number, of prepaid card service providers operating in the United States and receiving calls from payphones.

### **How Many Carriers Pay Compensation?**

Very few of the hundreds of resellers that handle calls originating from payphones have voluntarily undertaken to pay compensation to PSPs.

APCCS "bills" the carriers it identifies by sending them a notice on behalf of its clients requesting payment of per-call compensation. Out of 1,175 carriers "billed" in Fourth Quarter 1999, APCCS has received payments to date from 61, or roughly 5%, of the 1,175 companies billed.

As a result of this extremely low response rate, APCCS has had to resort to a variety of measures to try to extract payments from carriers that do not voluntarily respond to a notice. APCCS has even placed ads in industry trade publications urging carriers who have not paid payphone compensation to come forward and satisfy their obligations. To date, no carriers have responded to these ads by undertaking to make payments of DAC.

APCCS's attorneys have sent out over 120 letters putting carriers and resellers on notice of their DAC obligation and demanding that payment be made. There have been only a dozen responses to those letters and fewer than five carriers have begun making DAC payments as a result of those letters.

APCCS and four other compensation collection agents (representing a total of 1,200 PSPs and 300,000 payphones) have been forced to undertake an expensive and time-consuming study involving the call records of a sample of PSPs in order to identify high-volume resellers that have failed to pay DAC. This study has not yet been completed, but the preliminary results have identified many additional carriers and responsible organizations ("Resp Orgs") that are now being sent bills and demand letters for DAC.

In a number of cases, the efforts of APCCS and the other collection agents have been obstructed by Resp Orgs claiming they are not responsible for the payment of DAC, yet refusing to identify their customers who are switch-based resellers and are obligated to make DAC payments. In many instances, resellers that are sent DAC bills claim that (1) they are not aware of the Commission's payphone rules, (2) they have not implemented any system for tracking and recording calls from payphones, or (3) they are only now in the process of contracting with a clearinghouse to handle their DAC payments (some 3 years after the FCC's payphone rules were issued). In many cases, APCCS's efforts to bill and receive payment from resellers have been frustrated because the resellers either no longer are in business or claim they do not operate a switch and, therefore, have no DAC obligation to PSPs.

In the last year, APCCS and four other compensation collection agents have filed 20 lawsuits against carriers to collect unpaid payphone compensation, with a number of others in the preparation stage. Of the 20 lawsuits that have been filed, 18 have been against resellers. About half the lawsuits are still pending. The others have resulted in the collection of more than \$8 million from resellers. One of the resellers sued went bankrupt, frustrating any recovery.

While lawsuits against resellers have been relatively successful to date, they are time consuming and very expensive. In several instances, resellers have attempted to delay APCCS's collection efforts by raising primary jurisdiction issues and seeking referral of the cases to the FCC. Further, APCCS's policy of litigating against non-paying resellers has not resulted in any increase, to date, in the number of carriers voluntarily paying dial-around compensation.

### **Percentage of Compensation Paid**

APCC currently is not able to identify, for all payphones operated by its members, precisely how many payphone calls are compensated and how many remain uncompensated. APCC is conducting a data collection and analysis project to improve its ability to estimate the number of uncompensated calls based on call records generated by payphones. The alternative – utilizing the call recording capabilities of LEC switches is of limited value at present because only one ILEC, to APCC's knowledge, currently offers a call counting and identification service. Even that ILEC's service is costly and is available only in a few states.

APCC has reviewed data collected by one PSP that operates more than 16,000 payphones. This company utilizes the ILEC call recording service mentioned above. This service identifies the number of dial-around calls completed from payphones. The service also identifies the CIC of the carrier receiving each call.

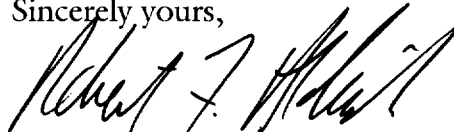
Based on the information collected, this PSP experienced the following results on calls that were routed to one of the "big three" interexchange carriers over a 12-month period from July 1998 through June 1999.

| <u>CIC Carrier</u> | <u>Number of calls recorded</u> | <u>Percentage paid/unpaid</u> |
|--------------------|---------------------------------|-------------------------------|
| AT&T               | 57 calls/phone/month            | 72% paid/28% unpaid           |
| MCI Worldcom       | 80 calls/phone/month            | 34% paid/66% unpaid           |
| Sprint             | 36 calls/phone/month            | 60% paid/40% unpaid           |
| Total              | 173 calls/phone/month           | 52% paid/48% unpaid           |

MCI recently supplemented its payments for this period for payphones that were incorrectly identified as having originated no calls. This increased the overall percentage of calls paid to this PSP and other PSPs, but APCC has not yet been able to quantify the impact on the payment percentages for this PSP.

Some of the shortfall in payments from these carriers is due to apparent call tracking failures on non-reseller calls, but a large portion is due to the IXC's disclaiming liability to make payments on reseller calls. For example, in mid-1998, one large IXC unilaterally reduced its DAC payments to APCCS and other collection agents by approximately 25% to 30% to recoup payments that had been made on behalf of resellers which, according to the IXC, should have been paid by the resellers and not the IXC.

Sincerely yours,



Robert F. Aldrich

RFA/nw

cc: Dorothy Attwood  
Yog Varma  
Charles Keller  
Marty Schrimmer  
Craig Stroup